

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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KEVIN LOYNACHAN and JANICE  
LOYNACHAN, individually and as  
successors-in-interest to  
Decedent CHAD LOYNACHAN,

Plaintiffs,

v.

DARLENE SMILEY, in her  
individual capacity as a law  
enforcement officer for SISKIYOU  
COUNTY SHERIFF'S OFFICE; and  
DOES 1-50, inclusive,

Defendant.

No. 2:22-cv-00841 WBS JDP

ORDER

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Plaintiffs Kevin and Janice Loynachan bring claims  
under the Fourth and Fourteenth Amendments, both individually and  
as successors-in-interest of their deceased son Chad Loynachan,  
against defendant Darlene Smiley. Defendant moves for summary  
judgment on all claims. (Mot. (Docket No. 39).)

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1 I. Factual Background

2 Defendant Darlene Smiley is, and was at all relevant  
3 times, a transport officer with the Siskiyou County Jail. Her  
4 responsibilities included transporting inmates to and from places  
5 such as hospitals and courts. (Smiley Deposition (Docket No. 39-  
6 4) at 5.)

7 On February 5, 2021, Chad Loynachan was stopped for  
8 speeding and then arrested for possession of a stolen firearm and  
9 drugs for distribution. (Internal Investigation I<sup>1</sup> (Docket No.  
10 39-6) at 6-8.) Loynachan was taken to the Siskiyou County Jail  
11 as a pretrial detainee the same day. (Id. at 10.)

12 Shortly before noon on February 19, Loynachan  
13 approached a custodial officer and said that he swallowed a  
14 razor. (Id. at 11.) Arrangements were promptly made to have  
15 Loynachan medically evaluated at the Fairchild Medical Center.  
16 (Id.) Prior to transport and according to protocol, Loynachan  
17 was placed in belly chains, leg shackles, and handcuffs tethered  
18 to the belly chains. (Smiley Deposition at 12-13.) The leg  
19 shackles were around 14 inches in length; Loynachan's handcuffed  
20 hands could reach out approximately a foot from the belly chains.  
21 (Id. at 13-14.) Loynachan was searched for weapons, also  
22 according to protocol. None were found. (Id. at 15.)

23 Defendant, as the on-duty transport officer,  
24 transported Loynachan in a Ford Expedition SUV to the Fairchild  
25 Medical Center. (Internal Investigation II (Docket No. 40-1) at  
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27 <sup>1</sup> The parties submitted different excerpted portions from  
28 the same Siskiyou County Sheriff Department's Internal  
Investigation of Loynachan's death.

1 3.) Defendant was equipped with a duty belt, which contained her  
2 duty gun secured to her right hip in a holster with a safety  
3 release. (Smiley Deposition at 30, 43.) Defendant also had a  
4 taser holstered to her left thigh. (Id. at 50.) No other  
5 transport officers accompanied Loynachan. (Id.) Defendant drove  
6 Loynachan to the hospital and parked the car outside the hospital  
7 entrance. (Smiley Deposition at 10.) Hospital security camera  
8 footage shows Loynachan and defendant walking into the hospital  
9 around five minutes before noon. (Docket No. 39-7 at 2.)

10 Loynachan and defendant left the hospital about an hour  
11 later. (Id. at 3.) They walked around the Expedition to the  
12 driver's side, with Loynachan in front. (Smiley Deposition at  
13 19.) Loynachan stopped and stood by the rear tire on the  
14 driver's side while defendant entered a code on the driver's door  
15 to unlock it. (Id.) Defendant then opened the driver's door,  
16 unlocked the rest of the car, shut the driver's door, and opened  
17 the passenger door on the driver's side. (Id.)

18 A struggle ensued. (Id. at 23-51.) Defendant alleges  
19 that Loynachan, after initially entering the vehicle, lunged at  
20 her and grabbed her duty belt, repeatedly headbutted and bit her  
21 fingers and ear, and attempted to reach for her holstered taser.  
22 (Id.) The struggle ended with defendant firing a single shot  
23 into Loynachan's right mid abdomen. (Autopsy Report (Docket No.  
24 40-9) at 2.) Based on autopsy reports, the shot was fired less  
25 than an inch away from Loynachan's abdomen. (Olson Deposition  
26 (Docket No. 39-5) at 11.) The bullet traveled right to left,  
27 downwards, and front to back, eventually lodging in the left side  
28 of Loynachan's lower back bone. (Id. at 12-15.) Loynachan fell

1 and lay supine and unresponsive with his head near the  
2 Expedition's rear left tire and his feet near the front left  
3 tire. (Docket No. 39-12 at 5.) Loynachan was taken to an  
4 emergency operating room; however, he suffered "devastating"  
5 damage from the bullet wound and was pronounced dead after over  
6 two hours of surgery. (Nelson Decl. (Docket No. 39-8) ¶¶ 2-4.)

7 Loynachan's body showed fresh abrasions on his scalp,  
8 nose, and lips, and a laceration of his eyelid. (Olson  
9 Deposition at 15-17.) There are no records indicating that  
10 Loynachan entered the hospital for his earlier evaluation with  
11 any of these injuries. (See generally Docket No. 39-11.)

12 An officer who arrived on the scene shortly after the  
13 gunshot reported that defendant was "very obviously upset and was  
14 crying," and had blood on her hands and forehead. (Docket No.  
15 40-8 at 5.) Defendant received a medical evaluation within an  
16 hour of the shooting, which documented fresh human bite marks and  
17 broken skin on her left hand fingers and her right ear, and a  
18 "goose egg" lump on the back of her head. (See generally Docket  
19 No. 39-9.)

## 20 II. Legal Standard

21 Summary judgment is proper "if the movant shows that  
22 there is no genuine dispute as to any material fact and the  
23 movant is entitled to judgment as a matter of law." Fed. R. Civ.  
24 P. 56(a). A material fact is one that could affect the outcome  
25 of the suit, and a genuine issue is one that could permit a  
26 reasonable trier of fact to enter a verdict in the non-moving  
27 party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,  
28 248 (1986).

1           The movant bears the initial burden of demonstrating  
2     the absence of a genuine issue of material fact as to the basis  
3     for the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323  
4     (1986). The moving party can satisfy its burden by presenting  
5     evidence that negates an essential element of the nonmoving  
6     party's case. Celotex Corp., 477 U.S. at 322-23. Alternatively,  
7     the movant can demonstrate that the non-moving party cannot  
8     provide evidence to support an essential element upon which it  
9     will bear the burden of proof at trial. Id. The burden then  
10    shifts to the non-moving party to set forth specific facts to  
11    show that there is a genuine issue for trial. See id. at 324.  
12    Any inferences drawn from the underlying facts must, however, be  
13    viewed in the light most favorable to the non-moving party. See  
14    Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
15    587 (1986).

### 16    III. Discussion

17           Plaintiffs bring three Section 1983 claims against  
18    defendant: Fourth Amendment excessive force (Claim 1); Fourth  
19    Amendment failure to provide reasonable post-arrest care (Claim  
20    2); and Fourteenth Amendment familial loss (Claim 3). (See  
21    generally First Am. Compl. ("FAC") (Docket No. 33).)

#### 22    A. Excessive Force (Claim 1)

23           Defendant asserts qualified immunity against  
24    plaintiffs' excessive force claim. Qualified immunity is a  
25    question of law to be decided by the court. See Hunter v.  
26    Bryant, 502 U.S. 224, 228 (2009) ("Immunity ordinarily should be  
27    decided by the court long before trial."). A defendant is  
28    entitled to qualified immunity if a plaintiff (1) has not

1 "alleged" or "shown" facts that would make out a constitutional  
2 violation, or (2) fails to show that an alleged constitutional  
3 violation was not "'clearly established' at the time of  
4 defendant's alleged misconduct." A.D. v. Cal. Highway Patrol,  
5 712 F.3d 446, 453-54 (9th Cir. 2013) (citing Pearson v. Callahan,  
6 555 U.S. 223, 232, 236 (2009)). On a motion for summary  
7 judgment, the court first determines "whether the evidence viewed  
8 in the light most favorable to the plaintiff is sufficient to  
9 show a violation of a constitutional right." Sandoval v. County  
10 of San Diego, 985 F.3d 657, 671 (9th Cir. 2021) (cleaned up).

11 1. Constitutional Violation

12 "[A]pprehension by the use of deadly force is a seizure  
13 subject to the reasonableness requirement of the Fourth  
14 Amendment." Tennessee v. Garner, 471 U.S. 1, 7 (1985). The  
15 Supreme Court in Graham v. Connor set forth a non-exhaustive list  
16 of factors for evaluating an officer's reasonability: (1) the  
17 severity of the crime at issue, (2) whether the suspect posed an  
18 immediate threat to the safety of the officers or others, and (3)  
19 whether the suspect actively resisted arrest or attempted to  
20 escape. See George v. Morris, 736 F.3d 829, 837 (9th Cir. 2013)  
21 (citing Graham, 490 U.S. 386 (1989)). And in Tennessee v.  
22 Garner, the Supreme Court analyzed the application of deadly  
23 force by weighing (1) the immediacy of the threat, (2) whether  
24 force was necessary to safeguard officers or the public, and (3)  
25 whether officers administered a warning, assuming it was  
26 practicable. See George, 736 F.3d 829, 837 (citing Garner, 471  
27 U.S. at 11-12).

28 "In cases where the best (and usually only) witness who

1 could offer direct testimony for the plaintiff about what  
2 happened before a shooting has died, our precedent permits the  
3 decedent's version of events to be constructed circumstantially  
4 from competent expert and physical evidence, as well as from  
5 inconsistencies in the testimony of law enforcement." George,  
6 736 F.3d at 834 (9th Cir. 2013).

7           It is undisputed that some kind of violent altercation  
8 ensued between Loynachan and defendant -- their respective wounds  
9 beyond Loynachan's gunshot wound attest to that. However, the  
10 present record leaves some room, however slight, for a genuine  
11 dispute as to whether Loynachan, in the moments before the fatal  
12 shot, ceased his attack on defendant and was turning to flee.  
13 Roger Clark, plaintiffs' expert witness, opines that "it is  
14 likely that Loynachan was turning away or turned away in some  
15 manner of escape when Deputy Smiley shot him" based on the  
16 trajectory of the bullet. (Clark Report<sup>2</sup> (Docket No. 40-10) at  
17 7-8.) Clark also states that the position of Loynachan's body  
18 right after the shot was "in a position more consistent with  
19 Loynachan trying to escape . . . ." (Id. at 8.)

20           Clark's report also leaves room for genuine dispute on  
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22           <sup>2</sup> Defendant objects to the expert reports of Roger Clark  
23 (Docket No. 40-10) and Leonard J. Romero (Docket No. 40-6):  
24 Clark's, on hearsay grounds because Clark "is not a medical  
25 doctor and [] cannot and has not, analyzed the path of the bullet  
26 he uses to claim the decedent was 'trying to flee' at the moment  
27 he was wounded;" and Romero's, because it was not made under  
28 penalty of perjury. (Reply at 3.) These are no grounds to  
ignore the reports. "At the summary judgment stage, we do not  
focus on the admissibility of the evidence's form. We instead  
focus on the admissibility of its contents." Fraser v. Goodale,  
342 F.3d 1032, 1036 (9th Cir. 2003); see Fed. R. Civ. P.  
56(c)(2).

1 whether lethal force was truly necessary to safeguard defendant's  
2 safety. Defendant testified that she, at some point, was able to  
3 create some space between herself and Loynachan during the  
4 altercation. (Smiley Deposition at 31 ("I am trying to push away  
5 from him, and at one point I do know -- remember either pushing  
6 or hitting the side of his head. I get away enough and am now to  
7 my right side, and he is biting my ear." ).) From this Clark  
8 concludes that defendant could have, and should have, "simply  
9 stepped away, created distance and used a less lethal force  
10 option." (Clark Report (Docket No. 40-10) at 7.) There are also  
11 genuine disputes of material fact on whether lethal force was  
12 proportionate to the danger that Loynachan posed, or to the  
13 severity of defendant's injuries, at least because no testimony  
14 from Loynachan is available to counter defendant's testimony on  
15 the precise nature and severity of Loynachan's assault or whether  
16 he was in fact attempting to reach defendant's taser to disarm  
17 her immediately before the shot.

18 "Credibility determinations, the weighing of the  
19 evidence, and the drawing of legitimate inferences from the facts  
20 are jury functions, not those of a judge, whether he is ruling on  
21 a motion for summary judgment or for a directed verdict. The  
22 evidence of the non-movant is to be believed, and all justifiable  
23 inferences are to be drawn in his favor." Anderson v. Liberty  
24 Lobby, Inc., 477 U.S. 242, 255 (1986) (citing Adickes v. S. H.  
25 Kress & Co., 398 U.S. 144, 158-59 (1970)). Accordingly, in light  
26 of the issues raised by Clark's report and the absence of  
27 countervailing testimony from Loynachan, for purposes of ruling  
28 on this motion the court is compelled to accept the inferences



1 opined in Clark's report and conclude therefrom that defendant  
2 violated Loynachan's constitutional right to be free from  
3 unreasonable seizure by fatally shooting him.

4 2. Clearly Established Right

5 Still, qualified immunity applies if the violated  
6 constitutional right was not clearly established. "A right is  
7 clearly established when it is 'sufficiently clear that every  
8 reasonable official would have understood that what he is doing  
9 violates that right.'" Rivas-Villegas v. Cortesluna, 595 U.S. 1,  
10 5-6 (2021) (quoting Mullenix v. Luna, 577 U.S. 7, 11 (2015)).  
11 When determining whether a right is clearly established, the  
12 court may not "define clearly established law at a high level of  
13 generality." Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018)  
14 (quoting Ashcroft v. Al-Kidd, 563 U.S. 731, 742 (2011)). Rather,  
15 "[t]his inquiry 'must be undertaken in light of the specific  
16 context of the case, not as a broad general proposition.'" Rivas-Villegas,  
17 595 U.S. at 5-6 (citation omitted); see White v.  
18 Pauly, 580 U.S. 73, 79 (2017) ("[T]he clearly established law at  
19 issue must be particularized to the facts of the case.").

20 Tailoring the court's inquiry closely to the specific  
21 contours of the present record, the court defines the relevant  
22 question thusly: Would a reasonable officer understand that it  
23 was unlawful to use lethal force against a detainee when the  
24 detainee is no longer resisting, but is instead in the process of  
25 fleeing from the officer?

26 The balance of precedent suggests that the answer is  
27 yes. See, e.g., Graham v. Connor, 490 U.S. 386, 394 (1989)  
28 ("[T]he use of deadly force to apprehend a fleeing suspect who

1 did not appear to be armed or otherwise dangerous violated the  
2 suspect's constitutional rights, notwithstanding the existence of  
3 probable cause to arrest.") (citing Tennessee v. Garner, 471 U.S.  
4 1, 5 (1985)); Foster v. City of Indio, 908 F.3d 1204, 1211 (9th  
5 Cir. 2018) ("It is clearly established law that shooting a  
6 fleeing suspect in the back violates the suspect's Fourth  
7 Amendment rights."); Harris v. Roderick, 126 F.3d 1189, 1203 (9th  
8 Cir. 1997) ("Graham's totality of the circumstances test does not  
9 permit the use of deadly force to kill a suspect who is running  
10 back to a cabin where he is temporarily staying . . . ."); Tan  
11 Lam v. City of Los Banos, 976 F.3d 986, 1002-03 (9th Cir. 2020)  
12 ("The law was also clearly established at the time of the  
13 incident that firing a second shot at a person who had previously  
14 been aggressive, but posed no threat to the officer at the time  
15 of the second shot, would violate the victim's rights."); Curnow  
16 By and Through Curnow v. Ridgecrest Police, 952 F.2d 321, 324-25  
17 (9th Cir. 1991) (shooting suspect in the back who was armed with  
18 a rifle but not facing the officer or pointing the rifle at the  
19 officer at the time of the shot, was unreasonable and a violation  
20 of a clearly established right).

21 Defendant cites no countervailing cases, either in  
22 their motion or in reply, that suggest a different definition of  
23 the clearly defined right, or a different conclusion under the  
24 court's definition.

25 Permitting the inference, without so finding, that  
26 Loynachan ceased his assault and was turning to flee in the  
27 moments before defendant shot him, the case law establishes that  
28 defendant had "fair warning" that using deadly force would

violate Loynachan's Fourth Amendment right. See Hope v. Pelzer, 536 U.S. 730, 741 (2002)

Accordingly, because defendant's entitlement to qualified immunity ultimately turns on disputed issues of fact, summary judgment is not presently appropriate for this claim. See Liston v. Cty. of Riverside, 120 F.3d 965, 975 (9th Cir. 1997) ("While we have held that qualified immunity is to be determined at the earliest possible point in the litigation, we have also held that summary judgment in favor of moving defendants is inappropriate where a genuine issue of material fact prevents a determination of qualified immunity until after trial on the merits.").

B. Failure to Provide Reasonable Post-Arrest Care and Familial Loss Claims (Claims 2-3)

In their opposition, plaintiffs state that they "do not oppose dismissal of their failure to provide medical care claim or 14th Amendment familial loss claim." (Opp'n at 17 n.2.) Plaintiffs also did not assert any arguments opposing summary judgment on those claims. Accordingly, the court will grant defendant's summary judgment motion as to Claims 2 and 3.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment (Docket No. 39) be, and the same hereby is, DENIED as to Claim 1, and GRANTED as to Claims 2 and 3.

Dated: February 6, 2024



WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE